

**BEREC report on the outcome of the
public consultation on the impact of
premium content on ECS markets
and the effect of devices on the open use
of the Internet**

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1. Introduction

During its 32nd plenary meeting (5-6 October 2017, Bucharest) BEREC approved for public consultation the Draft BEREC report on the impact of premium content on ECS markets and the effect of devices on the open use of the Internet.

In accordance with BEREC's policy on public consultations, BEREC publishes a report summarising the stakeholders' views and how they have been taken into account. In addition, BEREC publishes all individual contributions on its website, taking into account stakeholders' requests for confidentiality. The public consultation was open from 11 October to 8 November 2017.

This document summarises the responses received to the public consultation and presents BEREC's position with regard to suggestions and proposals put forward in those responses, as relevant. In total eight responses were received from the following stakeholders:

1. European Telecommunications Network Operators' Association (ETNO)
2. Telefónica S.A. (Telefónica)
3. Vodafone
4. European Competitive Telecommunications Association (ECTA)
5. MVNO Europe
6. BT Group (BT)
7. European Broadcasting Union (EBU)
8. One citizen (Jukka Rannila, Finland)

BEREC welcomes all contributions and thanks all stakeholders for their submissions.

2. Premium content

ETNO believes that the relevance of this report for BEREC's future work in this area is not entirely clear. ETNO suggests that BEREC takes into account that market trends such as bundling of services, content and devices, is not specific to ECS markets but is reflected across the digital market and this potential task goes beyond BEREC's mandate.

BT asks BEREC to clarify the status of its work on premium content, its purpose, whether it intends to develop it further, and how stakeholders can get involved in that process. BT considers this report as a useful first step on the way to analyse this topic, but states that further work is required to develop a more complete and balanced view. BT considers BEREC's approach to be focusing on sources of concern, rather than assessing the level of consumer benefit. BT proposes that any future report should acknowledge these three facts: 1) content is significantly more locally diverse and varied than ECS, 2) content is a much more emotive product for consumers than ECS, 3) digital markets, including content markets, change and innovate at pace.

ECTA believes that the draft report does not succeed in establishing areas of concern regarding the impact of bundling practices and exclusivity agreements on ECS markets. ECTA regrets that neither the questionnaire sent to NRAs, nor the results that were generated by it, have been published.

EBU believes that the BEREC report could constitute a useful step towards creating more synergies between telecoms policies and content policies. In particular, EBU suggests that BEREC promotes the implementation of telecoms policies in ways that contribute to audiovisual policy objectives.

ETNO believes that a comprehensive assessment providing robust insights would require a significant amount of further analysis to provide a balanced assessment of the issues at hand.

BEREC Response:

As stated in the BEREC 2017 Work Programme, the purpose of the report is to consider the position of operators in the digital environment: how electronic communications interact with other sectors and whether the relevant rules apply to all.

In fact, according to the BEREC 2017 Work Programme, the purpose of the report regarding content is to:

1) Provide a snapshot on the current situation in Europe regarding (i) the distribution of premium content by different actors, (ii) the application of bundling practices, and (iii) the exclusivity agreements applied for content; 2) Identify areas of concern regarding the impact of these bundling practices and exclusivity agreements on ECS markets; and 3) Summarise approaches taken by NRAs and competition authorities to address potential competition concerns in this area.

As such, the relevance of the report is to get an overview of the situation in Europe, which is considered useful for NRAs and BEREC as an initial step, should BEREC decide to continue its work in this area.

BEREC agrees with ETNO that bundling of services, content and devices, is not specific to ECS markets but is reflected across the digital market. However, although BEREC's regulatory scope does not cover audiovisual content markets, the impact on ECS markets can be relevant, particularly as markets are converging, and BEREC considers it useful and important to analyse such interaction. In this constantly evolving area it is not possible to provide a future-proof analysis. Regarding the lack of a definition of areas of concerns stated by ECTA, these areas of concerns are specified in sections 2.2.3 and 2.2.4. BEREC considers that these areas of concern could be further developed and may be subject of future reports in this area.

BEREC takes note of EBU's remark, and agrees that cooperation between the different entities in charge of media and of telecoms regulations can be useful.

Finally, BEREC would like to clarify that the results of its questionnaire were integrated throughout the text of the report. BEREC has not published the full results from the questionnaire, as some of the information provided by NRAs is confidential.

2.1. Value chain

Telefónica considers that the description made by BEREC to address the value chain does not fairly depict the relative position of ECS operators in the whole content ecosystem and that the assessment of the role of ECS operators in the competitive process seems to be disproportionate. Telefónica believes that elaborating more on the current situation in EU markets regarding existing exclusivity deals would show that the market landscape for content distribution is quite balanced and competitive. Telefónica also considers that the role of content creators and rights holders in the way premium content is bundled and commercialised is downgraded in the report and should be analysed in more depth in order to provide a more accurate assessment of the topic.

BEREC Response:

BEREC acknowledges the comment from Telefonica that the content ecosystem is more complex than provided for in this report. The report is however not focused on fully analysing the content market in general, but on providing a snapshot of the impact of premium content on ECS markets and providing some thoughts on the potential implications of this influence. For this reason, the analysis of the content market is limited in scope to the extent necessary for drawing general conclusions on its potential impact on ECS markets and on bundling strategies including ECS services. This is now underlined more clearly in the report (page 4).

The report does not assess the market for content distribution; as such, it does not qualify this market as unbalanced or uncompetitive (nor the contrary). BEREC in any case agrees that exclusivity for premium content is a relevant issue when assessing the impact of premium content on ECS markets, and that exclusivity can be set by the content rights holder when selling it for distribution. However, the situation regarding exclusivity may differ from country to country, and a general assessment of its impact cannot be done, being an issue to be addressed by national regulatory authorities (NCAs and/or NRAs).

2.2. Economics of bundling and interplay between content and ECS

2.2.2. Situation in Europe

ETNO notes that some premium content services, particularly premium sports content such as national football leagues, are often awarded exclusively to individual providers, often through auctions. This content tends to be highly valued by consumers who are willing to pay high premiums to access such content, often via pay-TV subscriptions. ETNO also highlights that a more recent development is the emergence of OTT platforms offering bundles consisting of some or all of various content services, devices and other retail services.

BEREC Response:

BEREC agrees with ETNO on the relevance of premium sports, and especially football for many of the EU countries as content highly valued by consumers, and this is specifically underlined in the report.

Regarding the emergence of OTT platforms offering bundles of various content services, devices and other retail services, this is one of several aspects considered in the report when

describing what factors should be taken into account when assessing the general impact of premium content on the ECS market (p. 16).

2.2.2.1. Bundling of fixed broadband services with premium content

Telefónica underlines the risk of overregulation, as more than 90% of the fixed broadband market in Europe relies on different types of bundling. Telefónica considers that Spain, one of the most active markets regarding bundling and convergence among EU member states, is a clear example that content bundling has had little or no effect in ECS market evolution in the last decade, since the premium content market in Spain was competitive enough and it did not produce imbalances on the ECS market.

BEREC Response:

BEREC agrees with Telefónica that bundling strategies are increasingly used by ECS operators to commercialise their services. However, BEREC does not consider that at this moment there is a risk of overregulation. The report describes the relevance of these bundling strategies for competition dynamics in the ECS markets and in the corresponding sections the regulatory tools used and decisions are presented without prejudging if there is a need for more regulatory powers for NRAs.

Regarding the Spanish market, it should be noted that, as explained in the report (see page 20 and Annex I), Telefónica provides key premium content to other ECS providers as part of the remedies imposed by the convergent regulator (CNMC) to clear the acquisition of DTS by Telefónica, and that the economic replicability tests notably take into consideration premium content.

2.2.3. Benefits/drawbacks of bundling ECS and Premium Content

ETNO underlines that the report does not consider: i) scenarios in which strong players in content markets (traditional broadcasters or on-demand providers) could leverage their market power in these markets into ECS markets; ii) the variety of available networks, including satellite, free-to-air services, or TV-cable providers, ii) the possibility that the bundling may in fact lessen the market power of ECS incumbents iii) the extent to which regulation of ECS markets may in fact risk inadvertently distorting related markets. ETNO expects that these aspects would be fully addressed by any further BEREC reports. ETNO also states that the BEREC draft report does not recognise that ECS retail markets have been largely deregulated, given effective competition is now present in most countries' retail residential ECS markets, as bundling of content services with ECS happens at the retail level.

ECTA agrees with BEREC that the bundling practices described can prejudice the competitive positioning of smaller, non-incumbent ECS providers, and calls for BEREC to analyse the extent to which this leads to a reduction in competitive pressure.

EBU welcomes the report's findings in relation to the potential negative implications of bundling for competition and consumers alike.

Telefónica considers that BEREC's description of bundling itself, or of the drawbacks associated with content, are overly simplistic and one-sided. Telefónica proposes the inclusion

of OTTs within the market definition to be analysed, as well as when addressing the supposed ability of ECS providers to exercise anticompetitive behaviour. Telefónica recommends that any analysis of the potential effects among related markets and transmission of market power should be based on a correct definition of those markets.

BT suggests that BEREC explores in more detail how the benefits and drawbacks could in practice be identified and measured.

BEREC Response:

Responding to the comments raised by ETNO, the scenarios in which strong players in content markets (traditional broadcasters or on-demand providers) could leverage their market power in these markets into ECS markets are less likely to take place than the ones where the ECS providers leverage their market position, bundling their ECS with premium content. The reason is that the networks needed for the key ECS services (fixed and mobile broadband) require investments of a much larger magnitude (likely requiring many years of sustained investment) than those needed to enter the content market, and as such ECS providers owning these networks are arguably in a better position to compete for bundles. To BEREC's knowledge, only one instance of such a scenario can be found in the European Economic Area (namely Sky entering the ECS market in the UK), while the reverse is observed in many countries of the EEA.

Although bundling strategies applied by alternative providers can effectively lessen market power of ECS incumbents, these bundling strategies are also applied by incumbents, which are in many cases in a better position to leverage their market position, as detailed in the report. In any case, the report does not limit the analysis of effects of bundling to incumbents, except for the section on regulation, which is usually applicable only to SMP operators.

On the distortion of related markets, it should be noted that regulatory intervention by NRAs is currently limited to ECS and does not apply to premium content, except for convergent NRAs, where any potential impact on all markets is taken into account. BEREC will consider this in case it continues to work on this issue.

Regarding the issue raised by ETNO about the deregulation of retail markets, it is true that bundling of content services with ECS concerns the retail level. Any potential competition problem at the retail level is likely to be addressed at the wholesale level (one can note that most, if not all, regulatory obligations at the wholesale level are actually related to competition problems detected at the retail level).

The suggestion from BT to explore in more detail how benefits and drawbacks could in practice be identified and measured is considered by BEREC as an interesting one, and may be part of a future BEREC assessment. However, any considerations about measures to tackle potential competition problems are not the objective of this report, as the report only intends to provide a descriptive snapshot and provide some thoughts on the potential implications of this situation.

Innovation and synergies

BT disputes the concern about content investments crowding out infrastructure investments. Based on its own data, BT states its investments in the areas of content and network infrastructure had no impact on each other.

BEREC Response:

BEREC specifically lists on page 14 of the report the possible negative and positive effects of bundling on investments, and therefore states that “*the global effect of the acquisition of premium content on network developments therefore remains unclear*”, as such BEREC is not precluding the outcome regarding this concern raised by some NRAs as a potential issue to take into consideration. The conclusion of this paragraph has been further nuanced in the report to address this issue.

Effects on competition in ECS markets

Telefónica believes that BEREC has not cast enough light over the particular circumstances of each country for it to generally conclude that incumbent ECS operators could be trying to distort competition in ECS markets. Telefónica states that the case of the Spanish content market shows that there is enough competition in the premium content market and no further regulatory intervention is needed.

BEREC Response:

The particular circumstances of each country may differ substantially regarding competition dynamics, both in the ECS markets and the premium content markets, therefore it is not possible to come to definitive conclusions, and each NRA should take into account the different issues addressed in the report to assess the situation.

As stated on page 20 of the report, it should be noted that in Spain there is regulation in force to apply ERTs where bundles including premium content are analysed and that, derived from the acquisition of DTS by Telefonica, there are specific remedies to ensure that key premium content owned by Telefonica are sold to alternative ECS operators.

2.2.4. Conclusions on premium content/ECS bundling practices

ETNO argues that the market for content includes very different kinds of available content, such as free TV services that can be received by nearly every access technology and pay-TV services that are also widely available. Accordingly, ETNO states that such content can be offered by every ECS provider and is unlikely to cause competition issues in ECS markets, unless it is deliberately withheld from some providers or technologies by a content provider. However, ETNO notes that some premium content services are often awarded exclusively to individual providers through auctions. To tackle this type of issue, the EU has previously implemented the so-called “no single buyer rule” that stipulates rights have to be awarded to at least two different providers. Where exclusive content is bundled with ECS and the exclusive content is a significant driver of consumers’ choice, holding the majority of highly valued premium content may well impact on competitive dynamics. Even though such exclusive offers are usually limited to a specific period of time, other providers may face barriers to compete for premium content, e.g. challengers trying to win the next auction. ETNO argues that such auctions already fall under media regulation and are subject to competition law and so any identified issues should thus be addressed with the available regulatory tools. ETNO also notes that ECS platforms are today not in an advantageous competitive situation compared to other content providers, such as OTT platform services and broadcasters.

Vodafone states that BEREC should primarily focus on the bundling of premium TV content by one single operator with SMP in the fixed broadband market, as the incentives for this

operator to foreclose the market by pursuing an anti-competitive bundling strategy are increased.

Both Vodafone and ECTA support the need to improve the cooperation between NRAs and NCAs, as well as to clarify the important role of audiovisual regulatory authorities, including in cases of mergers between telecommunications operators and broadcasters.

BT believes that the facts do not support concerns about ECS incumbents acquiring significant shares of exclusive premium content. BT considers that only in a few countries are rights for national premier football leagues (the most valuable content in BT's view) held by the incumbents. In its view, a more prevalent scenario is the case where the incumbent is a smaller entrant in the content market. BT highlights the asymmetry between ECS providers and content providers, given that access to the ECS network is highly regulated whereas owners of exclusive premium content can enjoy strong and persistent market position without any wholesale regulation.

ECTA argues that the findings on the competitive impact of bundling practices should be the starting point of analysis rather than its conclusion. ECTA underlines that the economies of scale in the acquisition and exploitation of content rights have been well known from traditional television programme distribution and content packaging. Given the definition of premium content on which the report is based, ECTA suggested that at least a qualitative assessment of the competitive demand-side impact would have seemed appropriate. ECTA proposes that BEREC elaborates on its analysis and considers a follow-up study in the context of its Medium Term Strategy 2018-2020 and underlines that such a follow-up would already be urgent, given potential foreclosing effects of the competitive impact.

BEREC Response:

BEREC agrees with ETNO that the market for content includes very different kinds of available content. For example, as addressed in the report, the definition of premium sports may differ from country to country and premium content and free TV may be made available through various different technologies. Although BEREC also agrees that exclusivity agreements are in the scope of audiovisual and competition regulation, the effect of bundling of premium content in the ECS markets is relevant to the application of the ECS regulatory framework, as are economic replicability tests to bundles including premium content. Regarding platforms, the situation may differ from country to country, depending on various factors, such as high speed fixed broadband use and coverage or satellite TV penetration. In several countries¹ satellite TV is the most used technology to deliver premium content. Regarding the increasing competitive constraint exerted by OTTs on the content market, this issue is discussed in the report.

BEREC agrees with Vodafone that the primary focus for regulatory issues should be on SMP operators in the fixed market, as regulation mainly applies to SMP operators. BEREC also agrees with Vodafone and ECTA that cooperation between ECS NRAs, NCAs and audiovisual regulatory authorities is key, including when mergers across actors operating in different

¹ This appears to be the case for example for Greece, Latvia, Czech Republic, UK, Germany, Slovakia and Croatia.

markets take place. These opportunities for cooperation could be further explored in a future BEREC assessment.

Regarding the issues raised by BT regarding exclusivity for premium content, especially football rights being held by actors that are not ECS providers, it should be noted that although this is true for many European countries, ECS providers are increasingly entering the premium content market. BEREC acknowledges a regulatory asymmetry between the market for premium content rights and the market for access to telecommunications networks; this asymmetry derives from different regulatory frameworks for these markets, which have very different characteristics. However, this does not mean that there is necessarily an unfair treatment of different actors; moreover, ex-post regulation applies equally to both.

In relation to ECTA's comments, the report is focused on a first analysis of the competitive impact of bundling ECS with premium content. This could be a starting point for a future assessment. Economies of scale for the acquisition and exploitation of premium content could be a critical issue to be taken into account when assessing the ability to acquire and commercialise premium content and this issue could be considered in any follow-up work addressing demand-side issues.

2.3. Regulation and National Cases

ECTA believes that the report should compare the cited cases in more depth and should more extensively discuss the cases in which NRAs have dealt with issues of premium content under the current framework. ECTA also notes that while the potential leveraging of market power in the context of premium content is covered, the draft report does not provide any analysis of the leveraging practices in this context, nor does it specify what precisely is meant by the ability to provide premium content.

BEREC Response:

There are few cases of NRAs dealing with issues related to premium content under the current framework, and most of them are related to powers for convergent NRAs in media markets (such as Ofcom) or ex-post competition issues (such as ACM, CNMC or Ofcom), that are already addressed in the report. In any case, BEREC considers that it would be interesting to convey a more in-depth analysis of ERT methodologies regarding bundles including premium content in a future report. The relevance of the current leveraging practices differs widely among countries, but can also be the subject of further analysis, together with a more in depth analysis of the ability to provide premium content by ECS providers, taking a comprehensive view, including other key actors acquiring media rights and selling at the retail level, as OTTs and satellite TV providers.

2.3.3. Cases in the scope of the ECS framework

Vodafone considers that NRAs are currently not sufficiently equipped to deal with competition issues arising from bundling by a single operator with SMP and that these issues can only be addressed through cooperation between NRAs and NCAs. Vodafone believes that there is a need to improve the level of remedies available and that such remedies could include access to content as well as improved economic replicability tests.

BT notes that BEREC included in the report the example of the imposition of a VULA margin squeeze test by Ofcom in the UK in 2015, in particular the inclusion of content cost recovery in the margin squeeze tests. However, BT considers that the EC's comments on the proposed test should have been included as well. BT believes that the UK case illustrates the risk that ECS regulation can inadvertently distort competition in the content markets.

BEREC Response:

BEREC does not discuss whether the existing powers for NRAs are sufficient to address competition problems derived from bundling practices, but simply presents existing regulatory tools and cases in this area. In any case, BEREC agrees with Vodafone on the relevance of combined work between NRAs and NCAs and, as explained on page 8 in this document, mechanisms for collaboration between NRAs and NCAs could be addressed in a follow-up assessment.

Regarding the issue raised by BT, BEREC notes that Ofcom addressed the comments raised by the European Commission in the statement published by Ofcom in March 2015. A reference has been made in footnote 46, which accompanies the paragraph that covers the comments made by the European Commission and Ofcom's response.

3. Devices and openness of the Internet

3.1. General aspects

ETNO welcomes BEREC's efforts to address the potential issues through further assessment. However, similar to the section on content, the relevance for BEREC's future work in this area is not entirely clear to ETNO and the analysis appears overly simplistic in ETNO's view. For example, ETNO considers that BEREC's conclusion that the vast majority of limitations related to the OS of devices are objectively justified and do not raise concerns, would require further reflection. ETNO states that BEREC's initial findings seem not to be in line with the European Commission's Statement of Objection for breach of competition law to the undertaking producing the most popular OS among smartphones and tablets.

Vodafone agrees with the key findings and the conclusion that any potential threats remain rather hypothetical and that at present no further regulatory intervention is necessary.

Telefónica agrees with the restrictions identified by BEREC, but believes that BEREC is underestimating the relevance of the barriers to switch from one device with a certain operating system to another device with a different operating system. In particular, beyond the question of familiarity to a specific OS, the lack of interoperability between OSs (notably in terms of cloud backup storage and other personal information) also contributes to the lock-in effect. Telefónica fully shares BEREC's understanding of the editorial power that App Stores have, but disagrees on the capacity of users to change from the Google App store to another one, as it requires actions to be taken by the user, and as pop-up messages discourage the usage of third party app stores. Telefónica believes users don't always move from apps and devices when there is a better option, in some cases because they don't even know that it exists, in some other cases because they cannot afford it and in some others because it requires too much effort or it is too complex. Telefónica considers that a case-by-case analysis

is needed in order to determine if there is anticompetitive conduct, but also mentions that there are already many complaints (either formal or informal) about specific restrictions which should be subject to more scrutiny, such as²:

- i) Device manufacturer or OS excluding competitors from some hardware functionalities or restricting hardware information to third party providers (complaints regarding Progressive Web Apps);
- ii) App store not allowing the installation of apps outside of the app store or disincentivising users to do so through (automatic) warning messages;
- iii) Operating Systems restricting software features for third party app developers and privileging own virtual assistants or other integrated services;
- iv) The indexation provided by algorithms can be easily manipulated, and escape from the scrutiny of authorities.

Telefónica also considers that the report should underline the fact that OS providers can have an incentive to propose a biased presentation of the Internet, influenced by interested parties, and to foster the use of apps that provide greater revenues to the operating system owner.

Telefónica agrees with BEREC that monitoring by NCAs and NRAs of these markets is needed in order to allow timely interventions which can provide solutions before the damaging effects are irreparable, especially given the fact that the digital markets evolve so quickly, while competition law procedures follow a slower pace.

MVNO Europe requests BEREC to include in the report the customer activation experience – on all types of device - such as: i) Can the customer/end-user really choose its operator (specifically including an MVNO) on a device they purchase unlocked? ii) Is the customer/end-user experience limited (specifically if they choose to use an MVNO), even on an unlocked device? iii) If (e-) SIM-locking is applied, is the maximum contractual duration respected? iv) Are there/will there be new forms of locking-in beyond temporary contractual SIM-locking where the device is bundled/subsidised?

The citizen Jukka Rannila notes that generally, programs can work with an operating system and developers of programs use different parts of an operating system. The citizen proposes the use of open horizontal standards when developing different information system.

ECTA notes that even though the report recognises the distinction between fixed and mobile access devices, it appears to have had but insignificant bearing on the analysis. ECTA argues that while the definition of devices is so broad as to potentially encompass any object of the Internet of Things featuring an end-user interface, the report subsequently seems to narrow its analytical span of attention primarily to mobile devices. ECTA also considers that the report could have been more linked to NRAs' regulatory framework, for example through an analysis of device bundling practices, as well as an assessment of possible interference by app store providers with the general authorisation to provide electronic communications services. ECTA also considers that BEREC should further explore the precise pathways of intervention,

² Telefónica mentions more issues that are not directly in the scope of the report, or are already addressed in the report. The summary is focused on those ones more related to the content of the report not already addressed.

elaborate on the limits of NRAs' existing powers (in imposing remedies but also in requiring information for market monitoring), and review the existing indicators .

BEREC Response:

Regarding ETNO's concern, the subject matter of the report is the potential threat to the general goal of an open Internet. It does not aim to analyse or draw conclusions regarding the level of competition on digital markets. It is possible to conclude that, in terms of open use of the internet, the limitations due to devices do not raise major concerns, while still considering that there may be competition concerns regarding other issues. This is now clearer in the report (page 26-27).

Regarding Telefonica's remark on the barriers to switch between OSs or between app stores, the issues mentioned were added on pages 29 and 30. Regarding the restrictions mentioned by Telefonica, many are already cited in the report; however they are now made clearer in the report (in footnote 71, page 30). Also, developments regarding potential incentives to foster the use of apps that generate greater revenues can be found on pages 32-33.

Regarding the request of MVNO Europe, this is an interesting issue, which could be further analysed in a follow-up assessment or by the BEREC Expert Working Group focused on mobile issues.

Regarding ECTA's remarks, the report does not limit the analysis to mobile devices in itself; notably, apps can also be found on fixed devices, on smart TVs, etc. However, it is true that the analysis conducted by BEREC might not be fully exhaustive. This was clarified on page 27 of the report. Regarding device bundling practices, BEREC could not find any instance where those practices had an impact on the openness of the internet use, but welcomes any reporting of such issue; moreover, according to NRAs views, device subsidisation is much less intense than several years ago. The other suggestion by ECTA on regulatory powers and interventions may be considered in a future BEREC report.

3.2. Development of devices enabling connection to the Internet

ECTA underlines that the analysis appears somewhat skewed towards the role of software functionalities, notably the relationship between operating systems and app stores on mobile devices, while the hardware dimension of equipment is left unanalysed. For ECTA this means that the report excludes from its scope relevant aspects relating to equipment design that fall within the scope of the framework as well as under the Open Internet Regulation and which thus might already be covered by NRAs' competences.

BEREC Response:

It has now been specified in the report that no specific restriction was identified regarding the hardware dimension of devices (footnote 55, page 26), but BEREC welcomes any suggestion of a specific fitting example in the future. Furthermore, the purpose of the report is not to analyse issues concerning internet access services that are already protected under the Regulation 2015/2120.

3.3. Interactions between devices and the open use of the Internet

ECTA encourages BEREC to consolidate the analysis by systematic examination of the different intersections with the regulatory framework and the dimensions governed by other bodies of law.

BEREC Response:

BEREC notes that a more in-depth systematic examination of the relevant legal provisions may be relevant.

Conclusion and envisaged approaches

EBU believes that monitoring by regulatory authorities is vital in view of the increasing importance of such end-user devices, OS and app stores as key gateways for users to access information. EBU welcomes the broad notion of devices targeted in the report, which includes inter alia IPTV boxes and smart TVs. EBU encourages BEREC to pay due attention in further work to connected TV boxes and smart TVs, as it considers that the availability and appropriate prominence of PSM (Public Service Media) services, often in the form of apps, is vital. Accordingly, EBU expressed its willingness to contribute to BEREC's overall monitoring exercise and is ready to share and discuss with BEREC the experiences and problems that its Members have encountered in this field, for example with regard to cable TV boxes, as well as emerging issues, including developments on the TV device OS market and control of the app environment by OS platforms.

The citizen Jukka Rannila believes that a close cooperation among the various relevant regulatory authorities, notably competition authorities, would be advisable, in particular if some of the risks mentioned above were to materialise, and proposes that BEREC organises regular assessments of the market – e.g. annually. This citizen proposes that part of the assessments could be based on the usage of different standards – i.e. private standards and open standards. Finally, the citizen proposes that BEREC collects an extensive list of relevant actors in different application fields.

BEREC Response:

In principle, BEREC does not foresee monitoring at the BEREC level at this stage, although this monitoring is considered useful for regulatory authorities. In any case, BEREC takes note of the willingness of EBU to share its views on these topics and could consider this in future BEREC work.

BEREC takes note of Jukka Rannila's point and agrees that a close cooperation with the various relevant regulatory authorities, notably competition authorities, would be advisable. The recommendations made could be considered in a follow-up assessment.